LIBRARY
SUPREME COURT, U. S.

FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-258

RAY ELBERT PARKER,

Petitioner,

v.

DANIEL J. BOORSTIN,
LIBRARIAN OF CONGRESS, *et al.*,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR PETITIONER

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Petitioner submits that he exhausted all available administrative remedies prior to filing in the District Court. The burden of review placed on the Court does not result from Petitioner's failure to act pursuant to Agency regulations, but rather is the direct result of the failure by the Federal Agency to act when given the opportunity

or in the alternative to follow their own published regulations.

The current tactic by a federal agency to deny employees opportunity to properly establish an administrative trial record on the one hand, while on the other hand pleading in the courts "failure to exhaust administrative remedies" as a defense violates the due process requirements guaranteed by the Fifth Amendment to the United States Constitution. *Equal Employment Opportunity Act of 1972*, Sec. 706; *Lodge 1858, American Federation of Government Employees v. Paine*, 436 F.2d 882, 896-897 (U.S. Court of Appeals, D.C. Circuit, 1970); *American Federation of Government Employees v. Acree*, 475 F.2d 1289, 1292 (U.S. Ct. Appls., D.C. Cir., 1973).

The courts below relied completely on the self-serving affidavits of Respondents in granting the motion for summary judgment. Petitioner asserts that the Court erred in not granting the right to discovery on the issue of "exhausting of administrative remedies", pursuant to Rules 32(a)(1) and 56, Federal Rules of Civil Procedure, since there is a genuine issue of fact and manifest abuse of administrative discretion. *NAACP, Western Region v. Hodgson*, 57 F.R.D. 81 (U.S. Dist. Ct., D.C., 1972). *Fitzgerald v. Hampton*, 467 F.2d 755 (U.S. Ct. Appls., D.C. Cir., 1972).

Respectfully submitted,

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